

## **SPECIAL USE PERMIT**

<b>FILE NO.</b>	<b>SP20-001</b>
<b>LOCATION</b>	<b>1490 Richards Avenue</b>
<b>ZONING DISTRICT</b>	<b>R-1-8 Single-Family Residence</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Residential Neighborhood</b>
<b>PROPOSED USE</b>	<b>Special Use Permit to allow the demolition of an existing 420-square foot detached garage and construction of a 924-square foot detached garage for an existing single-family residence on a 0.49-gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt per CEQA Guidelines Section 15303(e) for New Construction or Conversion of Small Structures</b>
<b>APPLICANT</b>	<b>Richard Haro Richard Haro Drafting &amp; Planning, Inc. 2150 Mangin Way San Jose, CA 95148</b>
<b>OWNER</b>	<b>Richard and Cynthia Klein 1490 Richards Avenue San Jose, CA 95125</b>

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as following for this proposed project:

1. **Project Description.** This Special Use Permit is to allow demolition of an existing 420-square foot garage and construction of an approximately 924-square-foot garage for a single-family residence on a 0.49-gross acre site in the R-1-8 Single-Family Residence District.
2. **Site Description and Surrounding Uses.** The subject site is 0.49-gross acres in size and is developed with a 1,699-square foot single-family house. The subject site is surrounded by one- and two-story single-family residences with attached and detached garages within a residential neighborhood.
3. **General Plan Conformance.** The project is consistent with the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood, in that the detached garage will incorporate architectural features complementary and subordinate to the single-family residence, thereby preserving the existing character of the neighborhood.
4. **Zoning Ordinance Compliance.** The subject site is in the R-1-8 Single-Family Residence Zoning District. Accessory buildings are allowed uses in this zoning district. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code, including the development standards of the R-1-8 Single-Family Residence Zoning District.

- a. *Accessory Building.* Under the provisions of Section 20.30.500 of the San José Municipal Code, accessory buildings and structures for single-family residences may exceed 650 square feet with a Special Use Permit. The proposed project includes construction of a 924-square foot accessory building. Therefore, a Special Use Permit is required.
  - b. *Setbacks.* The proposed accessory building is set back approximately 90 feet from the front property line, conforming to the minimum setback requirement of 60 feet. No side or rear yard setbacks are required for interior lots per Section 20.30.500 of the San José Zoning Ordinance.
  - c. *Height.* The proposed accessory building is 12 feet in height as measured at the midpoint of the pitched roof slope, and 15 feet and inches in height at the roof peak, which meets the maximum height exception limits for accessory buildings pursuant to Section 20.30.530 of the San José Municipal Code.
  - d. *Rear Yard Coverage.* The combined coverage of all accessory buildings within the rear yard area of the subject property is approximately 10 percent, which is below the maximum allowable rear yard coverage of 30 percent pursuant to the provisions of Section 20.30.510 of the San José Municipal Code.
5. **Environmental Review.** Under the provisions of Section 15303(e) of the State Guidelines for Implementation of CEQA, this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, because the proposed 924-square foot accessory building is considered a small structure and will comply with all height, setback, and maximum coverage requirements set forth in the City of San Jose Zoning Ordinance and will not result in any adverse impact on neighboring properties.
6. **Special Use Permit Findings.** In addition to the above findings and pursuant to Section 20.100.820 of the Zoning Ordinance, the Director of Planning may issue a Special Use Permit only if all the following findings are made:
- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.  
*Analysis: The Special Use Permit is consistent with the General Plan land use designation as analyzed above and is not subject to any specific plan or area development policies. The project is also consistent with the following policy:*  
*Policy LU-11.6: For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.*  
*The proposed project is consistent with the style of the area—which contains a mix of single-family homes with detached garages in the rear lot and attached garages fronting the street. Further, the garage would be subordinate in size to the primary residence and would not result in excess structural density and massing within the neighborhood given that the total rear yard coverage of accessory buildings is approximately 10%.*
  - b. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: The Special Use Permit conforms to the Zoning Code and all other provisions of the San José Municipal Code as analyzed above. The project meets or exceeds the minimum setbacks and is within the allowable height for accessory buildings, and will provide the required two covered parking spaces for single-family homes.*

- c. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: The City Council has not adopted a specific policy for accessory buildings in residential zoning districts. The project is consistent with the City Council Outreach Policy as an on-site notice was posted on the subject property and notices for a hearing were mailed to properties within a 300-foot radius.*

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area;
  - ii. Impair the utility or value of property of other persons located in the vicinity of the site;
  - iii. Be detrimental to public health, safety, or general welfare.

*Analysis: The proposed detached garage will be set back from the front property line by approximately 90 feet, will be compatible with the architectural design of the existing single-family residence on the property, and will be subordinate in size and scale to the primary residence. The proposed project will not adversely affect persons living in the surrounding area in that accessory buildings are permitted uses allowed in a single-family residence neighborhood and in the R-1-8 Single Family Residence Zoning District and complies with the development standards of the San José Zoning Ordinance with respect to height, setbacks and rear yard coverage as discussed above.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.

*Analysis: The subject property is on a 0.49-gross acre site with sufficient land available in the rear yard to accommodate the proposed detached garage. The detached garage will comply with the requirements of setbacks and the rear yard coverage limitation pursuant to Sections 20.30.200 and 20.30.510 of the San José Municipal Code. The cumulative total of the rear yard covered by accessory structures and buildings is approximately 10 percent, which is below the maximum allowable rear yard coverage of 30 percent.*

- f. The proposed site is adequately served:
- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate;
  - ii. By other public or private service facilities as are required.

*Analysis: The subject property is served by Richards Avenue, a fully paved and improved public street; the property is served by all necessary public utilities. The detached garage site will be accessed via an existing approximately 15-foot wide driveway from Richards Avenue and will not increase the amount of traffic on the existing roads and public right-of-way.*

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: Increases in dust, noise, and vibration as a result of the project are limited to the construction period of the project. Construction will be temporary and will only occur between 7:00 a.m. and 7:00 p.m., Monday to Friday, thereby avoiding sensitive night and early morning hours.*

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional

Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions.
5. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
6. **Conformance with Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "Klein Garage, Richard and Cindy Klein, 1490 Richards Avenue" dated October 20<sup>th</sup>, 2019, on file with the Department of Planning, Building and Code Enforcement.
7. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, *SP20-001*, shall be printed on all construction plans submitted to the Building Division.
  - b. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
8. **Accessory Building Use.** All accessory buildings on-site shall conform in every respect to the definitions of accessory buildings found in Section 20.200.020 of the San José Municipal Code. This section identifies that accessory buildings shall be limited to a maximum of two plumbing fixtures and shall not contain conditioned space or living/sleeping quarters.
9. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
10. **Fire Compliance.** The project shall meet all applicable fire code requirements prior to issuance of the building permit.
11. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
12. **Building Materials.** All building materials are to be those specified on the Approved Plans.
13. **Tree Removals.** No tree removals are included with this permit. All trees 38 inches or larger in circumference, at a height of 4.5-feet above the natural grade slope, shall require a Tree Removal Permit issued by the Director of Planning.
14. **Grading.** A Grading permit or Notice of Exemption is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
15. **Stormwater Runoff Pollution Control Measures.** This project must comply with the City's



Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls to minimize stormwater pollutant discharges.

16. **Stormwater Peak Flow Control Measures.** The project is located in a Hydromodification Management (HM) area but will not create and/or replace one acre or more of impervious surface. The project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
17. **Sewage Fees.** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
18. **Street Improvements.** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
19. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

**APPROVED** and issued this **19<sup>th</sup> day of February, 2020.**

Rosalynn Hughey, Director  
Planning, Building and Code Enforcement

Deputy